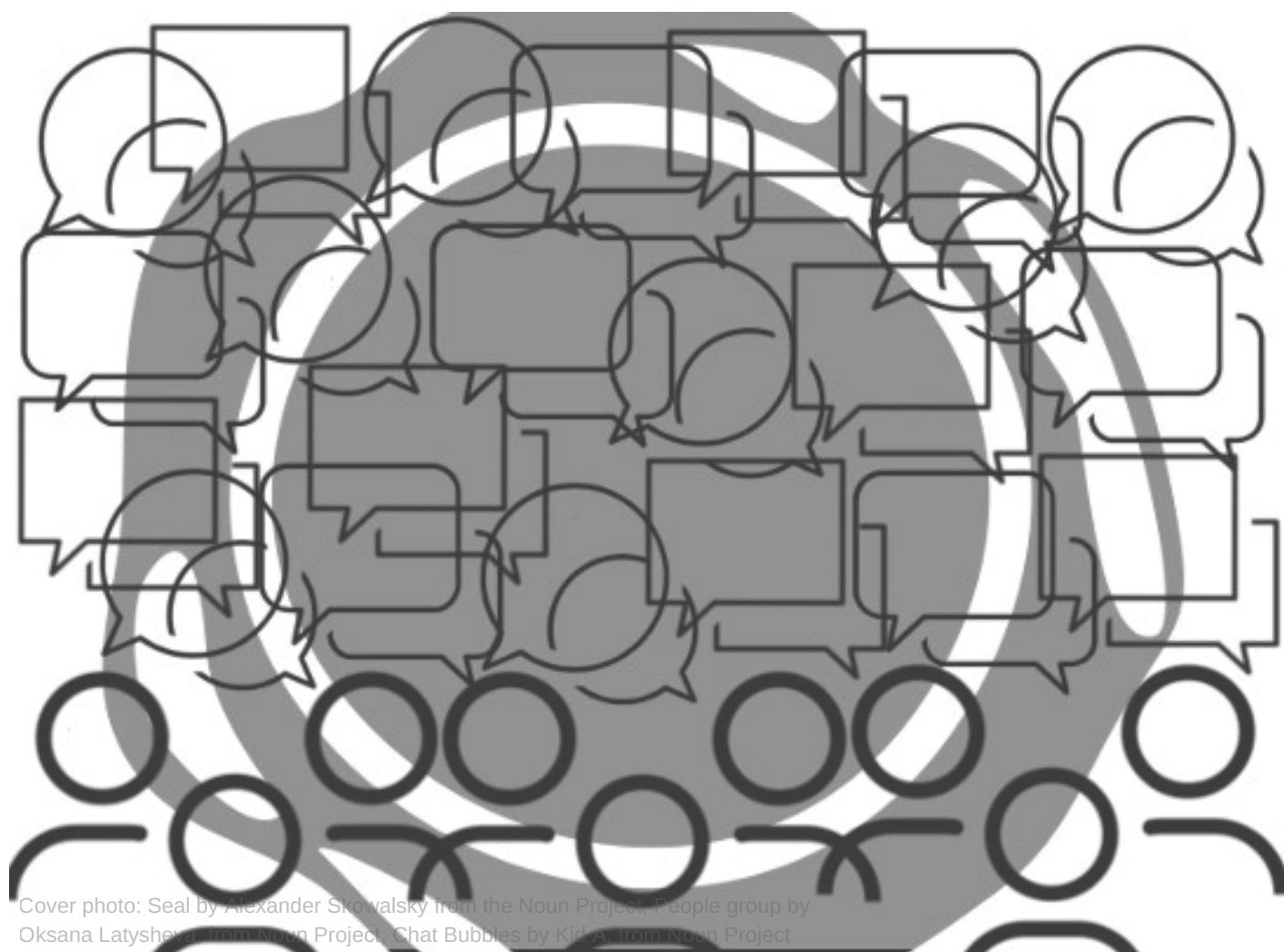


A TALE OF TWO CONSULTATIONS: ONLINE PARTICIPATORY PRACTICES IN BRAZIL



RESEARCH BRIEF

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1. Social and political context

The approval of the Brazilian Constitution in 1988, after over two decades of dictatorship (1964-1985), saw the re-introduction of participatory processes into the Brazilian legal framework. However, apart from mandatory and regular elections, participatory processes for stimulating direct participation were not institutionalised. For instance, the participatory budgeting process in which citizens choose projects to be financed by municipalities¹, is regulated by law, but is not mandatory. Its implementation is left to the discretion of each municipality. Thus the election of governing coalitions, willing to design and implement new institutions for participation, helped create a conducive environment for the implementation of decision-making venues in Brazil's new political moment.

Many authors have argued, that there has been a boost in direct participatory initiatives in Brazil since 2000 (Abers, Serafim & Tatagiba, 2014, p. 356)², a period in which the country was mostly governed by a left-wing coalition and many former civil society actors also joined the government. There was a higher permeability of social movements within state institutions. However, since the end of former President Dilma Rousseff's mandate, and after her impeachment, such initiatives have mostly faded. A worsening of the political and economic crisis, and the lack of strong institutionalisation of direct participation have contributed to the decline of participation initiatives in Brazil.

2. Access to technology

When it comes to ICT-mediated participation in Brazil, Internet penetration still remains a major challenge. Despite recent efforts to expand infrastructure, in 2015 only 51% of Brazilian homes had Internet access, and only 23% of the poorest households (in which income is equal or less than the minimum wage) had access to the Internet (Cetic.br, 2016)³. Another study pointed out that only 8% of Brazilians are fully proficient in understanding and interpreting the written word, which, besides the lack of technical skills and access, might impact the potential to fully engage in participatory processes (Insituto Paulo Montenegro e Ação Educativa, 2015)⁴.

3. ICT-mediated participation

According to many Brazilian scholars (Silva, 2009; Marques, 2011)⁵, Brazil's e-government platforms generally offer updated and complete information. However, opportunities to effectively

1 Different municipalities have different frameworks, people can either suggest projects or to choose among already chosen projects.

2 Abers, R., Serafim, L. & Tatagiba, L. (2014). Repertórios de Interação Estado-Sociedade em um Estado Heterogêneo: A Experiência na Era Lula. *Revista de Ciências Sociais*, 57, 325-357.

3 Cetic.br. (2016a). TIC Domicílios. Retrieved from: <http://cetic.br/pesquisa/domicilios>

4 Instituto Paulo Montenegro e Ação Educativa. (2015). Habilidades de Leitura, Escrita e Matemática são limitadas em muitos setores da economia brasileira, podendo restringir produtividade e capacidade de inovação.

5 Silva, S. (2009). Estado, democracia e Internet : requisitos democráticos e dimensões analíticas. Salvador: Universidade Federal da Bahia (PhD thesis).

Marques, F. P. J. A. (2011). Participação, instituições públicas e Internet: um exame dos canais participativos presentes nos Portais da Câmara e da Presidência do Brasil. In: Maia, R. C. M., Gomes, W., Marques, P. J. A. (Org) *Internet e Participação Política no Brasil*. Porto Alegre, Sulina. 95-116.

influence public policy frameworks and government strategies through the Internet, or even through offline interaction, are limited. The access gap is a barrier in using the Internet for empowering possibilities. For instance, official websites do not usually offer a space for collective discussions, and issues are solved individually by forms or email. In the case of surveys sponsored by the Senate, their impact on senators is not clear. There is no official policy or a set of guidelines for the use of social media, which is mostly used to publicise events. A study about the discussions carried on online forums in the House of Representatives' website came to a similar conclusion: despite the use of ICTs, means of measuring effective communication between representatives and citizens are still lacking.

Even after the approval and implementation of the Brazilian Access to Information Act (*Lei de Acesso à Informação*, also known as LAI), which allows any citizen to make a request for government information/data through open data portals, there is a long way to go in terms of access to information. Recent research conducted by InternetLab regarding transparency of the judiciary in Brazil, for example, shows that despite visible efforts to implement the requirements of LAI, such as considerable availability of information on the organisational structure of the tribunal, budget, remuneration of staff and ongoing projects, the lack of coordination regarding transparency policies inside is clear. Also, open data formats are not followed. While citizens can make requests to access openly available government data, the institutional-level obstacles prevent them from having easy and effective access to the same. Even in the processes of online public consultation that took place in recent years (for *Marco Civil da Internet* and the Copyright Law, for example), it was not a priority to give feedback to citizens about how their participation influenced the lawmaking process, and which of their suggestions were taken into consideration or not and why. The openness and political will to be more transparent is still lacking. In our case studies, we analysed two of the most important online public consultation processes, so as to take a deeper look at the issues and challenges regarding ICT-mediated participation.

4. Online consultations for *Marco Civil da Internet* and the Copyright Law

In 2009, the Brazilian Ministry of Justice partnered with an academic organisation, Center for Technology and Society, of the Getúlio Vargas Foundation (CTS/FGV), to build a platform for a public consultation about a draft bill on Internet users' rights. The would-be bill was referred to as an "Internet Bill of Rights", or *Marco Civil da Internet*. The consultation process was considered highly innovative, nationally and abroad, and mobilised a wide range of interested sectors (corporates, government bodies, civil society, academia, individuals). A year later, in 2010, the Brazilian Ministry of Culture put in place a similar process of public consultation for improving the copyright legislation, after having spent two years promoting open discussions in different cities, with multiple stakeholders (a process they called Copyright Forum - *Fórum de Direito Autoral*). Both experiences shared the same institutional goal to map arguments, commentaries and insights, and use them as inputs and legitimisation strategies in the traditional lawmaking process. For our case study, we drew a comparison between these two processes - their planning, implementation and results. Comparing the specific case of the Ministry of Culture's Copyright Reform and the Ministry of Justice's *Marco Civil* required analysing the specific approaches of the two ministries concerned and the historical antecedents of the two cases - which have implications for citizen voice and participation.

Our empirical approach was focused on the role played by different agents engaged in these distinctive and innovative online participatory practices on one side, and new informational and communicative structures and its uses on the other. The study aimed to understand what conditions were common to both cases and instances of divergence.

Analysing the decisions taken by the respective institutions promoting them, in terms of technologies adopted, dissemination strategies, and how proposals were developed after the process, we sought to answer questions such as: how transparent was the process of receiving proposals and turning them into policy? Did the responsible institutions justify their choices? How did external factors interact with the processes analysed in shaping the policy in the end? How did technical choices influence participation of a diverse set of voices? Did the institution carrying out the process take measures to promote diversity?

Our study concluded that ICT-mediated participation processes produce different effects from those created in traditional forms of participation. In the cases we have chosen for analysis, the collective construction of Internet-related policies (*Marco Civil da Internet* and Copyright Reform) occurred on a digital platform, made available online. In the case of the *Marco Civil*, the choice for the ICT-mediated engagement had a dual purpose: one of political strategy, by inverting the agenda that was in place in Congress at that point, and other of maximising the expertise of several stakeholders for a preliminary elaboration of norms. The Ministry of Justice chose to design an instrument that would allow social participation through the Internet, in order to increase the democratic character and legitimacy of the legislative process vis-a-vis social demands.

The Copyright Reform, in turn, took place after the collective elaboration of *Marco Civil da Internet* and was greatly inspired by it. Thus, in a way, the fears and insecurities regarding the effectiveness and legitimacy of the online public consultation process had been overcome. In fact, the experience with the *Marco Civil* had been so positive that the officials in charge of conducting the public consultation on Copyright Reform within the Ministry of Culture explicitly requested a similar platform. They also offered inputs that ultimately improved the process. The Copyright Reform platform was ultimately built from the evaluation of positive and negative aspects of the *Marco Civil* consultation. The design of the participation platforms, thus, were highly relevant to determine the form of participation in both cases.

As for the consequences of the processes concerned, *Marco Civil* was subsequently approved by the Brazilian Congress. This gave us an opportunity to analyse the impact this participatory process had on the proceedings of the bill, how different interests operated at that point and the renewed participation strategies adopted by civil society organisations and individuals while representatives were discussing the bill in Congress. Looking at these aspects of the process involved in *Marco Civil* provided us with an interesting picture of the complex relationship between open consultations and the realities of representative democracy. In contrast, the bill resulting from the public consultation on Copyright Reform was never even taken to Congress.

Differences in political context, particularly, mobilisation of different stakeholders and strategies adopted, shed light on the outcomes – success of the uptake in *Marco Civil*, and failure in the case of the Copyright Reform. The political commitment to the process on the part of the public administration and unity of interests among supporters of the projects were key factors. While changes in the personnel of the Ministry of Culture and lack of unity within civil society stalled the copyright consultation process, during *Marco Civil*, not only did the public administration provide stable support, but civil society coalitions, despite internal disagreements, managed to sustain through the process.

Another important factor was the difference in strategies of stakeholders who participated in the online public consultations and those who approached other institutions (such as the Congress). The Federal Police, for instance, were more comfortable having their voices heard through Congress. Another example is that of industry lobbies, including the telecommunication lobby, who influenced specific congressmen in order to modify certain provisions of the bill, when it was being discussed in the House.

An important conclusion in both cases, one “successful” and the other not as much, was that online public consultations were one moment of the process. They served as a modality to bring new ideas to the debate, making positions clear and public, forming communities and even legitimising

pre-existing positions. But they were not the only moment, and the results were shaped by other forms of participation and influences in policy-making.

The two public consultations described here, the elaboration of *Marco Civil da Internet* and the Copyright Reform, played a role, at least as experiments, in direct participation in the legislative process. The simultaneous character of the Internet allowed a two way flow of information, which improved the debate and the transparency of the processes analysed. In both cases, the online platforms made it easier to identify actors and their opinions and also enabled the overcoming of bureaucratic barriers. Moreover, the consultations allowed the organisation of civil society and the archiving of knowledge online, making it available for the construction of other legal texts.

Participatory processes are experiencing a decline in Brazil. After the euphoria at the beginning of the last decade, the opening of political processes to relevant social contributions is increasingly rare and formal, without generating real impacts on government policies. The country is going through a significant political and economic crisis. Moreover, the composition of the Brazilian Congress is the most conservative since Brazilian democracy was re-established, which can jeopardise new experiences of ICT-mediated participation. In this sense, it is still uncertain whether the repertoire of the state-society interaction can survive less progressive administrations. We hope, however, that the Brazilian experience can be useful to other societies too.

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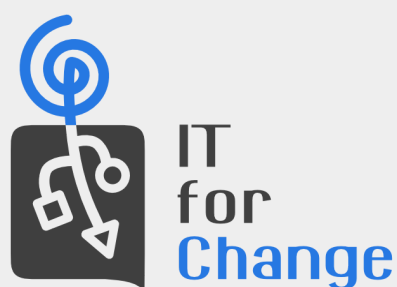
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